**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 598 OF 2007**

M/s.Gemini Global Enginerring Pvt.Ltd.
& Anr. ...Petitioners

V/s.

Mr.Govind R. Mhatre & Ors. ...Respondents

Mr.A.D. Shetty with Ms.Rita Joshi for the Petitioners.
Mr.Harshad Shaikh for the Respondent No.1.

**CORAM : V.M. KANADE, J.**

**DATED : MAY 3, 2007**

**P.C. :-**

1. Heard the learned Counsel for the petitioners and the learned Counsel for respondent no.1.

2. The petitioners are challenging the order passed by the Labour Court in Complaint (ULP) No.232/2005 in an interim application taken out by the complainant/respondent herein whereby the Labour Court was pleased to direct the respondents/petitioners herein to pay Rs.3000/- per month by way of interim relief from the date of the application till the disposal of the complaint and in the alternative, to permit the complainant to report for duty and pay wages as per working days of the complainant. The petitioners are also challenging the order passed by the Member,

Industrial Court, Mumbai, in Revision filed by the them whereby interim order passed by the Labour Court was confirmed by the Industrial Court. Brief facts which are relevant for the purpose of deciding this petition are as under :-

3. Respondent No.1 joined the services of the petitioner no.1 company as an Assembly Fitter sometime in 1986. The charge-sheet was issued to respondent no.1 initially on 16th November, 2004. However, no inquiry in respect of the said charge-sheet was conducted separately by the petitioners. Thereafter, a second charge-sheet was issued on 13th December, 2004 in which it was alleged that the respondent had committed various acts of misconduct. The respondent was suspended during the pendency of the inquiry and he was paid subsistence allowance during that period. The inquiry was concluded on 16th April, 2005 and on the basis of the evidence on record, the Enquiry Officer came to the conclusion that the charges levelled against respondent no.1 were conclusively proved and on 4th May, 2005, respondent no.1 was dismissed after taking into consideration the

finding which was given by the Enquiry Officer.

4. Respondent no.1 filed the complaint of unfair labour practice under the MRTU and PULP Act, 1971 under Item 1 of Schedule IV of the said Act against the said order of dismissal. In this complaint, he made an interim application seeking certain reliefs during the pendency of the complaint to the Labour Court. The Labour Court by its order dated 29th March, 2006 was pleased to allow the application and granted interim relief to the complainant directing the respondents/petitioners herein to pay Rs.3000/- per month by way of interim relief. The petitioners preferred revision application before the Industrial Court. The Industrial Court by its order dated 20th January, 2007 was pleased to dismiss the revision application and confirmed the order passed by the Labour Court.

5. Shri Shetty, learned Counsel for the petitioners submitted that the grant of interim relief to the respondent amounted to finally allowing the complaint of

the complainant. He submitted that the finding recorded by the Labour Court and confirmed by the Industrial Court was patently perverse. He submitted that both the Courts had relied on an inquiry in respect of the charge-sheet which was issued on 16.11.2004 which never had in fact taken place. He submitted that it is a clear case of non-application of mind on the part of both the Courts below. Secondly, he submitted that the Labour Court did not have jurisdiction to pass an interim order in view of the fact that the services of respondent no.1 were lawfully terminated after holding an inquiry. He invited my attention to the impugned order passed by the Labour Court below and submitted that in any event, there was no justification for allowing interim application which was taken out by respondent no.1. He invited my attention to the judgment of the Division Bench of this Court in the case of **United Ink & Varnish Co.Pvt.Ltd. V/s. Chandrashekhar Kurve and others reported in 2007 I CLR 503.** He submitted that the Division Bench in this case had held that the Labour Court was not competent to pass an order of interim relief directing the petitioner to

pay Rs.3000/- per month by way of interim relief. He also relied on the Judgment of the Single Judge of this Court in the case of **The Mahanagar Co-operative Bank Ltd. V/s. Co-operative Bank Employees Union and others in Writ Petition No.173/2007.** He also relied on the Judgment of the Single Judge of this Court in the case of **Solapur Janata Sahakari bank Ltd. & Anr. V/s. Vilas Digambar Kamble reported in 2002 III CLR 308.** He submitted that the services of respondent no.1 were terminated on account of his insolent behaviour and on account of abuses which he had given Director of the Company. He submitted that the Supreme Court had held that if such misconduct was proved by the employer, then in that case, the order of termination would not be disproportionate. He relied on the Judgment of this Court in the case of **TCE Consulting Engineers Ltd. (Formerly known as Tata Consulting Engineers a Division of Tata Sons Ltd.) V/s. Mr.Dilip P. Pandit & Anr. reported in 2007 I CLR 812** and the Judgment of the Apex Court in the case of **Mahindra and Mahindra Ltd. V/s. N.B. Narawade reported in 2005 I CLR 803.** He then relied upon the Judgment of the Supreme Court in the

case of **Workmen of Motipur Sugar Factory (Private) Ltd. Vs/. Motipur Sugar Factory (Private) Ltd. reported in 1965 II LL. Page 162.**

6. The learned Counsel for respondent no.1, on the other hand, submitted that the Labour Court had jurisdiction to grant interim relief in view of the provisions of Section 30(2). He submitted that both the courts after perusing the material on record had recorded the finding that prima facie no case has been made out against respondent no.1. He submitted that reference to the earlier charge-sheet dated 16th November, 2004 was obviously made in order to ascertain whether the past conduct of the workman was proper or not and in that context, the Labour Court had prima facie held that no evidence had been putforth to show either respondent no.1 had remained absent or had behaved in the insolent manner in the past. He submitted the workman had worked for a period of 19 years and that the procedure which is required to be followed is an inquiry, had not been followed by the Enquiry Officer and on both these grounds and the

finding which has been recorded by the Labour Court and Industrial Court, this is not a fit case for interfering with the Order passed by the Labour Court and Industrial Court.

7. There is a short question, in my view, which falls for consideration whether in an appropriate case, the Labour Court would have jurisdiction to pass interim order like the one which has been passed in this case and secondly, whether there was any justification for passing the aforesaid order from the Labour Court and Industrial Court.

8. In the present case, it can be seen that respondent no.1 has been working with the petitioner for the past 19 years before the date of the alleged incident which took place on 16th November, 2004. At this stage, there is nothing on record to indicate that prior to that date, respondent no.1 had committed any misconduct. On the basis of the material which is on record, the Labour Court has recorded the finding that the prima facie case has not been made out by the

employer for the dismissal of the employee. It is no doubt true that in view of the judgment of the Supreme Court, it is always open for the employer to prove his allegations even before the Labour Court and that it is probable that even otherwise, the employer may succeed in proving the charges against the employee. At this stage, however, it has to be kept in mind that however, a complaint is filed under Item I of Schedule 4 of the MRTU and PULP Act, the Labour Court was competent to consider the said application and during the pendency of the said complaint, can pass appropriate orders under Section 30(2). In the facts and circumstances of the present case, both the Courts below have come to the conclusion that this is a fit case for grant of interim relief. In my view, no case is made out for interfering with the order passed by the both the Courts below while exercising writ jurisdiction of this Court. In the case of **United Ink & Varnish Co.Pvt.Ltd. (supra),** the Division Bench of this Court in the facts of the said case in para 7 of the judgment has observed that Industrial Court was not justified in directing the employer to reinstate the employee. In my view, the

said ratio will not apply to the facts of this case in lieu of what is stated in para 8 of the said Judgment. Para 8 reads as under :-

> "We find no justification in the interim order being passed in favour of the complainant during the pendency of the complaint. The interim order granted by the courts below is set aside. The application for interim relief under section 30(2) of the MRTU & PULP Act, 1971 stands dismissed."

The order that was passed in the said case was on the basis of the facts of the said case. In the case of **Solapur Janata Sahakari Bank Ltd. & Anr. (supra),** a Single Judge of this Court while setting aside the order of reinstatement of the employee in service, recorded the statement of the petitioner that he is willing to deposit the amount of wages in the Labour Court and further directed that the amount which was deposited shall be allowed to be withdrawn by the respondent on his furnishing security to the satisfaction of the Labour Court. In my view, the ratio of the said judgment also will not be of any assistance to the petitioners' case. So far as other judgment on which reliance has been placed, in my view, that aspect can be

taken into consideration at the final hearing of the complaint pending before the Labour Court.

9. In my view, the ends of justice would be met if the order passed by the Labour Court and Industrial Court is modified and the petitioners are directed to deposit an amount of Rs.3000/- per month in the Labour Court by way of interim relief from the date of the application till the date of disposal of the main complaint.

10. Respondent no.1 is permitted to withdraw the said amount on his furnishing adequate security to the satisfaction of the Labour Court. The respondent shall also file an undertaking with the Labour Court that in the event after the final adjudication of the dispute, the petitioners herein succeed and the complaint of respondent no.1 is dismissed, in that event, he shall repay the said amount which has been paid to him during the pendency of the petition.

11. With these directions, the writ petition is

dismissed in limine.

12. At this stage, the learned Counsel for the petitioners seeks stay of the impugned order for a period of six weeks. The request is declined. The learned Counsel then makes a request that eight weeks' time may be given for the purpose of depositing this amount in the trial Court. The petitioners, accordingly, are granted eight weeks' time to deposit the amount in the Labour Court.

13. The Labour Court is directed to decide the dispute, as expeditiously as possible and in any event, within a period of one year from today.

. Parties to act on the authenticated copy of this order.

**(V.M. KANADE, J.)**